

PART 1980 - GENERAL

Subpart I - Community Programs Guaranteed Loans

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PART 1980 - GENERAL

Subpart I - Community Programs Guaranteed Loans

§ 1980.801 Introduction.

(a) This subpart, supplemented by Subpart A of this part, contains the regulations for Community Programs (CP) loans guaranteed by Rural Development, and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Rural Development employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of Subpart D of Part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with a Rural Development employee. (Revised 02-04-93, SPECIAL PN.)

(b) The purpose of the CP Guaranteed Loan program is to improve, develop, or finance water or waste disposal facilities in rural areas. This purpose is achieved through bolstering the existing private credit structure through the guarantee of quality loans which will provide lasting community benefits. It is NOT intended that the guarantee authority be used for marginal or substandard loans or to "bail out" lenders having such loans. (Revised 06-25-99, SPECIAL PN.)

(c) The CP loan program is administered by the Administrator through a State Director serving each State. The District Director is the focal point for the program and the local contact person for processing and servicing activities, although this subpart refers in various places to the duties and responsibilities of other Rural Development employees.

§ 1980.802 Definitions. (Revised 06-25-99, SPECIAL PN.)

The following general definitions are applicable to the terms used in this subpart. Additional definitions may be found in § 1980.6 of Subpart A of this part.

Borrower. A borrower may be a cooperative, corporation, or other legal entity organized and operated on a nonprofit basis; an Indian Tribe on a Federal or State reservation or other Federally recognized Indian tribal group; a municipality, county, or other political subdivision of a State. Groups organized under the general profit corporation laws may be eligible if they actually will be operated on a not-for-profit basis under their charter, bylaws, mortgage, or a supplemental agreement provision as may be required as a condition of loan approval.

Collateral. Security pledged for the guaranteed loan.

Lender. The person or organization making and servicing the loan which is guaranteed under the provisions of this subpart. The lender is also referred to in this subpart as the applicant, who is requesting a guarantee during the preapplication and application stage of processing.

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Lender's exposure. The lender's exposure before and after the loan, and any applicable limits on the lender's lending authority.

Loan classification system. The process by which loans are examined and categorized by degree of potential for loss in the event of default.

Problem loan. A loan which is not performing according to its original terms and conditions or which is not expected in the future to perform according to those terms and conditions.

Protective advances. Protective advances will not be made in lieu of additional loans. Protective advances are advances made by the lender for the purpose of preserving and protecting the collateral where the debtor has failed to and will not or cannot meet its obligations to protect or preserve collateral. Ordinarily, protective advances are made when liquidation is contemplated or in process. A protective advance must be an indebtedness of the borrower.

Public body. A municipality, county or other political subdivision of a state, an Indian Tribe on a Federal or State reservation, or another Federally recognized Indian Tribe.

Service area. The service area is that area reasonably expected to be served by the facility being financed by the guaranteed loan.

State. Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§§ 1980.803 - 1980.804 [Reserved]

§ 1980.805 Rural area determinations.

Facilities financed through Rural Development guarantee must primarily serve rural residents. For water or waste disposal facilities, the terms "rural" and "rural area" will not include any area in any city or town with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States. (Revised 06-25-99, SPECIAL PN.)

§ 1980.806 Availability of credit from other sources.

To be eligible for a guaranteed loan under this subpart, the borrower must be unable to obtain the required credit without the CP loan guarantee from private, commercial, or cooperative sources at reasonable rates and terms for loans for similar purposes and period of time. The borrower must certify in writing and Rural Development shall determine the credit is not available from other sources at reasonable rates and terms without the CP loan guarantee. The lender also must certify that it would not make the loan without the guarantee. These certifications shall become a part of the Rural Development case file.

§§ 1980.807 - 1980.810 [Reserved]

§ 1980.811 Legal authority and responsibility.

Each borrower must have or will obtain the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The borrower shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be exercised by the borrower even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease. Leases may be used when this is the only feasible way to provide the service and is the customary practice to provide such service in the state. Management agreements should provide for at least those items listed in Guide 24 of RD Instruction 1942-A (available in any Rural Development office.) Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

§ 1980.812 Priorities.

Section 1942.17 (c) of Subpart A of Part 1942 of this chapter shall apply to loans to be guaranteed under this subpart.

§ 1980.813 Eligible loan purposes.

(a) Funds may be used to construct, enlarge, extend, or otherwise improve water or waste disposal providing service primarily to rural residents and rural businesses. Rural businesses would include facilities such as educational and other publicly owned facilities. (Revised 06-25-99, SPECIAL PN.)

(1) Water or waste disposal facilities include water, sanitary sewerage, solid waste disposal, and storm wastewater facilities.

(2) Otherwise improve includes but is not limited to the following: (Renumbered 06-25-99, SPECIAL PN.)

(i) The purchase of major equipment, such as solid waste collection trucks, which will in itself provide an essential service to rural residents; (Revised 06-25-99, SPECIAL PN.)

(ii) The purchase of existing facilities, when necessary, either to improve or to prevent a loss of service; and

(iii) Payment of tap fees and other utility connection charges as provided in utility purchase contracts.

RD Instruction 1980-I
§ 1980.813 (Con.)

(b) Funds also may be used:

(1) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraph (a) of this section. (Revised and renumbered 06-25-99, SPECIAL PN.)

(i) Reasonable fees and costs such as origination fee, legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys and possible salvage or other mitigation measures, planning, and establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting, but not for more than three years unless a longer period is approved by the Rural Development National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than two years unless a longer period is approved by the Rural Development National Office; and interest on interim financing.

(iii) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding one year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are a secondary part of the total loan;

(B) The debts are incurred for the facility or service being financed or any part thereof;

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(2) To pay obligations for construction incurred before issuance of the conditional commitment. Construction work should not be started and obligations for such work or materials should not be incurred before the conditional commitment is issued. However, if there are compelling reasons for proceeding with construction before the conditional commitment is issued, applicants may request Rural Development approval to pay such obligations. Such requests may be approved if Rural Development determines that:
(Renumbered 06-25-99, SPECIAL PN.)

§ 1980.813(b)(2) (Con.)

- (i) Compelling reasons exist for incurring obligations before issuance of conditional commitment; and
- (ii) The obligations will be incurred for authorized loan purposes; and
- (iii) Contract documents have been approved by the lender; and
- (iv) All environmental requirements applicable to the applicant and the borrower have been met; and
- (v) The borrower has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanics, material, or other liens that may attach to the security property. Rural Development may authorize payment of such obligations at the time of loan closing. Rural Development's authorization to pay such obligations is on the condition that it is not committed to make the loan guarantee. Rural Development assumes no responsibility for any obligations incurred by the borrower; and the borrower must subsequently meet all loan guarantee approval requirements. The lender's request and Rural Development authorization for paying such obligations shall be in writing. If construction is started without Rural Development approval, post approval in accordance with this section may be considered.

§ 1980.814 Ineligible loan purposes.

Loan funds may not be used to finance:

- (a) On-site utility systems or business and industrial buildings in connection with industrial parks.
- (b) Facilities to be used primarily for recreation purposes.
- (c) Community antenna television services or facilities.
- (d) Facilities which are not modest in size, design, and cost.
(Renumbered 06-25-99, SPECIAL PN.)
- (e) Finder's and packager's fees. (Renumbered 06-25-99, SPECIAL PN.)
- (f) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in Section 6 of the Coastal Barriers Resource Act, P.L. 97-348 (available in any Rural Development office). (Renumbered 06-25-99, SPECIAL PN.)
- (g) New combined sanitary and storm water sewer facilities.
(Renumbered 06-25-99, SPECIAL PN.)

§ 1980.815 Transactions which will not be guaranteed.

(a) Loans made by any Federal or State agencies. This does not preclude guaranteeing loans made by the Bank for Cooperatives or Federal Land Bank.

(b) Loans involved in tax-exempt obligations according to § 1980.23 of Subpart A of this part.

(c) Loans for a water or waste disposal facility involving a Rural Development grant.

§ 1980.816 Facilities for public use.

The parameters for "facilities for public use," as defined at § 1942.17(e) of Subpart A of Part 1942 of this chapter, are applicable as well for this subpart. In addition:

(a) The term "Applicant/Borrower," as used in § 1942.17(e), shall mean the lender and the borrower for purposes of this subpart.

(b) The term "Rural Development Fundings," as used in § 1942.17(e), shall mean Rural Development guarantee for purposes of this subpart.

§ 1980.817 Fees and charges by lender.

(a) Allowable fees and charges by the lender are shown under § 1980.22 of Subpart A of this part.

(b) Guarantee fees are as shown under § 1980.21 of Subpart A of this part.

§ 1980.818 Eligible lenders.

(a) Eligible lenders as defined in this section may participate in the Rural Development CP loan guarantee program. These lenders must be subject to credit examination and supervision by either an agency of the United States or a state. Only those lenders listed in this section are eligible to make and service guaranteed loans, and such lenders must be in good standing with their licensing authority and have met licensing, loanmaking, loan servicing, and other requirements of the state in which the collateral will be located, and the loanmaking and/or loan servicing office requirements of § 1980.13 of Subpart A of this part. A lender must have the capability to adequately service loans for which a guarantee is requested. Eligible lenders include:

(1) Any Federal or State chartered:

(i) Bank, or

(ii) Savings and loan association.

(Continued on page 9)

§1980.818 (a) (Con.)

- (2) Any mortgage company that is a part of a bank holding company,
- (3) Farm Credit Bank of the Federal Land Bank Association or other Farm Credit System institution with direct lending authority authorized to make loans of the type guaranteed by this subpart,
- (4) An insurance company regulated by a State or National insurance regulatory agency, and
- (5) Other lenders that possess the legal powers necessary and incidental to making and servicing guaranteed loans involving community development type projects. These lenders must also be subject to credit examination and supervision by either an agency of the United States or a state, and other requirements as set forth in paragraph (a) of this section. These types of lenders must be approved by the FmHA Administrator prior to the issuance of the loan guarantee.

(b) With written concurrence of FmHA, another eligible lender may be substituted for a lender who holds an outstanding Form RD 449-14, "Conditional Commitment for Guarantee," provided the borrower, loan purposes, scope of the project, and loan terms remain unchanged. After issuance of the Loan Note Guarantee and with prior written approval of the FmHA Administrator, a new eligible lender may be substituted for the original lender provided the new lender agrees to assume all original loan requirements including liabilities, servicing responsibilities, and acquiring legal title to the unguaranteed portion of the loan. Such approval will be granted by the FmHA Administrator only when a lender discontinues lending operations or other extreme situations require a substitution of lender. If approved by the FmHA Administrator, the State Director will submit to the Finance Office Form RD 1980-42, "Notice of Substitution of Lender."

§1980.819 Loan guarantee limits.

The percentage of guarantee, up to the maximum allowed by this section, is a matter for negotiation between the lender and FmHA.

(a) Normally, guarantees will not exceed 80 percent unless extraordinary circumstances exist. The State Director will document these circumstances in the case file. National Office concurrence is required when the requested guarantee exceeds 80 percent. The maximum allowable guarantee will be 90 percent.

RD Instruction 1980-I
§1980.819 (Con.)

(b) Lenders and borrowers will propose the percentage of guarantee. FmHA informs lenders and borrowers in writing on Form RD 449-14 of any percentage of guarantee less than proposed by the lender and borrower, and the reasons therefore. FmHA determines the percentage of guarantee after considering all credit factors involved, including but not limited to:

- (1) Borrower's management.
- (2) Collateral.
- (3) Financial condition.
- (4) Lender's exposure (retain a minimum of 5% of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another.)
- (5) Current trends and economic conditions.

§§1980.820 - 1980.822 [Reserved]

§1980.823 Interest rates.

(a) Rates will be negotiated between the lender and the borrower. They may be either fixed or variable rates as long as they are legal. Interest rates will be those rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA review and approval. FmHA will take into consideration in approving the lender's interest rate, the rate at which guaranteed loans are being sold or traded in the secondary market.

(b) A variable interest rate must be tied to a base rate published periodically in a recognized national or regional financial publication specifically agreed to by the lender and borrower. Notice of any interest rate change proposed by the lender should allow a sufficient time period for the borrower to obtain any required state or other regulatory approval and to implement any user rate adjustments necessary as a result of the interest rate change. The interest rate will not be raised more than one percent per year. The intervals between interest

§1980.823 (b) (Con.)

rate adjustments will be specified in the loan agreement but not more often than annually. During the life of the loan, the interest rate will not be increased more than 5 percentage points over the interest rate at loan closing. The lender must incorporate within the variable rate promissory note or bond at loan closing, the provision for adjustment of payment installments coincident with an interest rate adjustment. This will assure the outstanding principal balance is properly amortized within the prescribed loan maturity and eliminate the possibility of a balloon payment at the end of the loan.

(c) Any change in the interest rate between the date of issuance of the Form RD 449-14 and before the issuance of the Loan Note Guarantee (Form RD 449-34) must be approved by the State Director. Approval of such change will be shown on an amendment to Form RD 449-14.

(d) It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the lender and borrower agree and:

(1) The rate on the unguaranteed portion does not exceed that currently being charged on loans of similar purpose for borrowers under similar circumstances.

(2) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion.

(e) When multi-rates are used, the lender will provide FmHA with the overall effective interest rate for the entire loan. Multi-rate loans must be either fixed or variable, but not both.

(f) The borrower, lender and holder (if any) may collectively effect a permanent reduction in the interest rate on their CP guaranteed loan at any time during the life of the loan upon written agreement by these parties. FmHA must be notified by the lender, in writing, within 10 calendar days of the change. If the guaranteed portion has been repurchased by FmHA, then FmHA is a holder, and must affirm or reject interest rate change proposals. When FmHA is a holder, it will concur

in such interest rate change only when it is demonstrated to FmHA that the change is a more viable alternative than initiating or proceeding with liquidation of the loan or continuing with the loan in its present state and that the Government's financial interests are not adversely affected. Factors which will be considered in making such determination will include whether the proposed interest rate will be below the Government's cost of borrowing money; whether continuing with the loan would realistically promote or enhance rural development, whether the monetary recovery would be increased by proceeding immediately to liquidation, if applicable; or allowing the borrower to continue at a reduced interest rate; and whether an in-depth financial analysis by the lender reasonably indicates that the project would be successful at a lower interest rate and reasonably indicates that the borrower could make the reduced payment and pay off amounts in arrears, if any. The FmHA file will reflect the documentation of the interest rate change decision.

(1) Fixed rates cannot be changed to variable rates to reduce the interest rate to the borrower unless the variable rate has a ceiling which is less than the original fixed rate.

(2) Variable rates can be changed to a lower fixed rate. In a final loss settlement, when qualifying rate changes are made with the required written agreements and notification, the interest will be calculated for the periods the given rates were in effect, except that interest claimed on a loan which originated at a variable rate, can never exceed the amount which would have been eligible for claim, had the variable rate remained in force. The lesser cost to the Government will always prevail. The lender must maintain records which adequately document the accrued interest claimed.

(3) The lender is responsible for the legal documentation of interest changes by a rider attached to the promissory note(s) or any other legally effective amendment of the rate(s); however, no new note(s) may be issued.

(g) No increases in interest rates will be permitted under the CP loan guarantee except the normal fluctuations in approved variable interest rate loans.

(h) FmHA will notify the Finance Office of any interest rate change by using Form RD 1980-47, "Guaranteed Loan Borrower Adjustments." The District Director will make corrections to the Rural Community Facilities Tracking System (RCFTS) reflecting the interest rate change. The FmHA loan file, as well as the attachments to the copy of the promissory note in the file, will be documented by the District Director to reflect any change in the interest rate.

§ 1980.824 Terms of loan repayment.

(a) Principal and interest on the loan will be due and payable as provided in the debt instrument except, any interest accrued as the result of the borrower's default on the guaranteed loan(s) over and above that which would have accrued at the debt instrument rate on the guaranteed loan(s) will not be guaranteed by Rural Development. The lender will structure repayments as established in the loan agreement between the lender and borrower. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and borrower on terms that reasonably assure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income, but such installment will be due and payable within two years from the date of the debt instrument and at least annually thereafter. Interest will be due at least annually from the date of the debt instrument. Ordinarily, monthly payments will be expected, except for borrowers with income limited to less frequent intervals.

(b) The maximum time allowable for final maturity for a Rural Development guaranteed CP loan will be limited to the useful life of the facility, not to exceed forty (40) years.

(c) Rural Development will not guarantee any loan in which the bond, promissory note, or any other document provides for the payment of interest upon interest.

§§ 1980.825 - 1980.831 [Reserved]

§ 1980.832 Environmental requirements.

The environmental requirements for this subpart are set out at § 1980.40 of Subpart A of this part and Subpart G of Part 1940 of this chapter.

§ 1980.833 Flood or mudslide hazard area precautions.

The flood or mudslide hazard area precautions required for this subpart are set out at § 1980.42 of Subpart A of this part.

§ 1980.834 Equal opportunity and nondiscrimination requirements.

The equal opportunity and nondiscrimination requirements for this subpart are set out at § 1980.41 of Subpart A of this part.

§§ 1980.835 - 1980.841 [Reserved]

§ 1980.842 Economic feasibility requirements.

The economic feasibility requirements for this subpart are set out at § 1942.17(h) of Subpart A and/or at § 1942.116 of Subpart C of Part 1942 of this chapter.

§ 1980.843 Security.

(a) The lender is responsible for seeing that proper and adequate security is obtained and maintained in existence and of record to protect the interest of the lender, the holder, and Rural Development.

(b) Security must be of such a nature that repayment of the loan is reasonably assured when considered with the integrity and ability of project management, soundness of the project, and the applicant's prospective earnings. The security may include but is not limited to the following: General Obligation Bonds, pledge of taxes or assessments, facility revenue, land, easements, rights-of-way, water rights, buildings, machinery, equipment, accounts receivable, contracts, and cash or other accounts. Security may also include assignments of leases or leasehold interest.

(c) All security must secure the entire loan. The lender will not take separate security to secure only the unguaranteed portion of the loan. The lender will not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan.

§ 1980.844 Appraisal reports. (Revised 06-25-99, SPECIAL PN.)

The borrower is responsible for the acquisition of all property rights necessary for the project and will determine that prices paid are reasonable and fair. An independent appraiser may be utilized.

§§ 1980.845 - 1980.850 [Reserved]

§ 1980.851 Processing applications.

(a) Preapplications.

(1) The County Office may handle initial inquiries and provide basic information about the program. They are to provide Standard Form (SF) 424.1 or 424.2, "Application for Federal Assistance." The County Supervisor will assist borrowers as needed in completing SF-424 and in filing written notice of intent and request for priority recommendations with the appropriate clearinghouse (except Federally recognized Indian tribes which will be dealt with in accordance with § 1940.453(c) of Subpart J of Part 1940 of this chapter). The County Supervisor will inform the borrower that if credit for the project is available from commercial sources without the guarantee at reasonable rates and terms, the borrower is not eligible for a loan guaranteed by Rural Development. Preapplications filed in the County Office will be forwarded immediately to the District Office. The applicant/borrower will be informed that further processing will be handled by the District Office. An information folder will be established and maintained by the County Office once a preapplication is received. In the event

§ 1980.851(a)(1) (Con.)

the preapplication is filed in the District Office, the District Director may assist the borrower in completing the preapplication requirements. The District Director will meet with the applicant/borrower whenever appropriate, to discuss Rural Development preapplication processing. The appropriate information to set up the County Office information file will be sent to the County Supervisor by the District Director. Guidance and assistance will be provided by the State Director, as needed, for orderly application processing. The District Director will determine that the preapplication is properly completed and fully reviewed. The District Director will then forward the preapplication package to the State Director. The preapplication package will contain:

- (i) Eligibility determination and recommendations.
- (ii) One copy of SF-424.1 or 424.2.
- (iii) State intergovernmental review comments and recommendations for the borrower's project (clearinghouse comments.)
- (iv) Priority recommendations.
- (v) Supporting documentation necessary to make an eligibility determination, such as financial statements, audits, or copies of organizational documents or existing debt instruments. The District Director will advise borrowers/applicants on what documents are necessary. Borrowers should not be required to expend significant amounts of money or time developing supporting documentation at the preapplication stage.
- (vi) Information on applicant.

(2) The State Director will review each SF-424.1 or 424.2 along with other information that is deemed necessary to determine whether financing from commercial sources at reasonable rates and terms is available without a guarantee. If credit elsewhere is indicated, the State Director will instruct the District Director to so inform the applicant and borrower.

(Continued on page 17)

§1980.851 (a) (Con.)

(3) If preapplication information indicates the project is ineligible, does not have sufficient priority, or that funds or guarantee authority are not available for the project, FmHA will so inform the applicant and borrower in writing with all reasons for the decision indicated. If it appears the project is eligible, has sufficient priority, is economically feasible, and loan guarantee authority is available, FmHA will inform the applicant and borrower in writing and request that they complete the application. The applicant must be informed that an environmental review has not been conducted and no major commitment should be made that could affect the consideration of alternatives.

(b) Applications.

(1) Application conference. When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant and borrower to provide copies of appropriate appendices and forms, and furnish guidance necessary for orderly application processing. The District Director will confirm decisions made at this conference by letter to the applicant and borrower. As the application is being processed, and the need develops for additional conferences, the District Director will arrange with the applicant for such conferences.

(2) Content of application package.

(i) Form RD 1980-10, "Application for Loan and Guarantee."

(ii) Form RD 1910-11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts."

(iii) Form RD 1940-20, "Request for Environmental Information."

(iv) Preliminary architectural or engineering report as appropriate, in accordance with Guides 6, 7, and 8 of Subpart A of Part 1942 (available in any FmHA office).

(v) Cost estimates.

(vi) Appraisal reports (as appropriate).

(vii) Credit reports obtained by the lender or FmHA on the borrower.

(viii) Form RD 400-1, "Equal Opportunity Agreement."

RD Instruction 1980-I
§1980.851 (b)(2) (Con.)

(ix) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agencies having jurisdiction over the project.

(x) Financial feasibility study, when required.

(xi) Proposed loan agreement.

(xii) Complete environmental review.

(xiii) Any additional information as may be required.

(3) Review of decision. If at any time prior to issuance of the conditional commitment it is decided that favorable action will not be taken on a preapplication or application, the District Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant under Subpart B of Part 1900 of this chapter. The following statement will also be made on all notifications of action: "The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Credit Protection Act. The Federal Agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580."

§1980.852 FmHA evaluation of application.

(a) FmHA will complete Form RD 1942-45, "Project Summary - Water and Waste Disposal and other Utility-type Projects," or Form RD 1942-43, "Project Summary Community Facilities (Other Than Utility-type Projects)," as appropriate. The application will be evaluated and a determination made as to whether the borrower is eligible, the proposed loan is for an eligible purpose, and there is reasonable assurance of repayment ability, sufficient collateral and equity, the proposed loan complies with all applicable statutes and regulations, and adequate funds are available. The FmHA Architect/Engineer will review the Preliminary Architect/Engineer reports and provide technical analysis and recommendations on the appropriate Project Summary. If FmHA determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee. If FmHA conditionally commits to guaranteeing the loan after

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the receipt of a completed application in accordance with §1980.47 of Subpart A of this part, it will provide the lender and the borrower with Form RD 449-14, listing all conditions for such guarantees. FmHA will include in the requirements of the Conditional Commitment for Guarantee a full description of the approved use of guaranteed loan funds as reflected in the Form RD 1980-10.

(b) Within 30 days after the Form RD 449-14 has been accepted, the State Director will send to the National Office, Attention: Community Facilities Division or Water and Waste Disposal Division, as appropriate, the following documents:

- (1) A copy of Form RD 1942-43 or FmHA 1942-45.
- (2) A copy of Form RD 449-14 (with attachments) as accepted by the lender and borrower.
- (3) A copy of the proposed loan agreement between the lender and the borrower.
- (4) A copy of Form RD 1980-10.

The cover memorandum should indicate whether the Form RD 449-34 has been issued. If the Loan Note Guarantee has been issued, enclose a copy of the Lender Certification required by §1980.60(a) of Subpart A of this part, and, if not, a proposed date for issuance of the Form RD 449-34.

§1980.853 Loan approval and obligating funds.

The State Director will prepare an original and two copies of Form FmHA 1940-3, "Request for Obligation of Funds - Guaranteed Loans," for each loan to be obligated. Also, for each initial loan, Form RD 1980-50, "Add, Delete, or Change Guaranteed Loan Borrower Information," will be prepared. The State Director will sign the original and one copy and conform the second copy. Form RD 1940-3 will not be mailed to the Finance Office. Notice of approval to lender will be accomplished by providing or sending the lender the signed copy of Forms FmHA 1940-3 and 449-14 on the obligation date, unless the Administrator has given prior authorization to the Finance Office to obligate before the 6-day reservation period and directs the State Director to forward Form RD 1940-3 to the lender in advance of issuance of Form RD 449-14.

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The State Director or designee will record the actual date of lender notification on the original of the Form RD 1940-3 and retain the original of the form and the remaining conformed copy of Form RD 1940-3. The State Director or designee will use the State Office terminal to request reservation/obligation of funds. Use of the telephone for the reservation/obligation of funds is restricted to those instances when the State Office terminal is inoperative. Form RD 1980-50 will be prepared and distributed for initial loans only.

(a) Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in rejection of the request for reservation of authority. After the security code is furnished, all pertinent information contained on Form RD 1940-3 will be furnished to the Finance Office. Upon receipt of the telephone request for reservation of authority, the Finance Office will record all information necessary to process the request for reservation in addition to the date and time of the request.

(b) The individual making the telephone request will record the date and time of the telephone request and place his/her signature in section 35 of Form RD 1940-3.

(c) The Finance Office will terminally process telephone reservation requests. Those requests for reservations received before 2:30 p.m. Central Time, to the extent possible, will be processed on the date received; however, there may be instances in which the reservation will be processed on the next working day.

(d) Each working day the Finance Office will notify the State Office by telephone of all projects for which authority was reserved during the previous night's processing cycle and the date of obligation. If authority cannot be reserved for a project, the Finance Office will notify the State Office that authority is not available within the State allocation. The obligation date will be 6 working days from the date of the request for reservation of authority which is being processed in the Finance Office. Immediately after notification by telephone of the reservation of authority, the State Director will call the Legislative Affairs and Public Information Staff in the National Office as required by RD Instruction 2015-C (available in any FmHA office).

§1980.854 Projects requiring National Office review.

(a) The following will be submitted to the National Office when the loan guarantee is not within the State Director's approval authority.

- (1) Transmittal memorandum including:
 - (i) Recommendation.
 - (ii) Date of expected obligation.
 - (iii) Any unusual circumstances.
- (2) Preapplication package.
- (3) Application package.
- (4) Project Summary (Form RD 1942-45 or 1942-43).

(b) For applications to be reviewed in the field, at least those items in paragraphs (a)(2) through (4) of this section, should be available.

§1980.855 Review of requirements.

(a) Immediately after reviewing the conditions and requirements in Form RD 449-14, the lender and borrower should complete and sign the "Acceptance of Conditions," and return a copy to the FmHA District Director. If certain conditions cannot be met, the lender and borrower may propose alternate conditions to FmHA.

(b) If the lender indicates in the "Acceptance of Conditions" that it desires to obtain a Loan Note Guarantee (Form RD 449-34), and subsequently decides at any time after receiving a conditional commitment that it no longer wants a guarantee, the lender will immediately advise the FmHA District Director.

§1980.856 Conditions precedent to issuance of the Loan Note Guarantee (Form RD 449-34).

In addition to compliance with the requirements of §1980.60 of Subpart A of this part, compliance with the following provisions are required prior to issuance of the Loan Note Guarantee:

(a) Transfer of lenders. With prior written concurrence of the FmHA Administrator, the FmHA approval official may approve a substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment for Guarantee (where Loan Note Guarantee has not yet been issued) provided, there are no changes in the borrower's ownership or control, loan purposes, scope of project, and loan conditions in the Form RD 449-14, and the loan agreement remains the same. To effect such a substitution, the former lender will provide FmHA with a letter stating the reasons it no longer desires to be a lender for the project. The substituted lender will execute a new Part "B" of Form

FmHA 1980-10. If approved by FmHA, the Administrator will issue a letter of amendment to the original Form RD 449-14 reflecting the new lender who will acknowledge acceptance of the letter or amendment in writing. If the Loan Note Guarantee has been issued, the provisions of §1980.818 (b) regarding substitution of lender must be followed.

(b) Substitution of borrowers. FmHA will not issue a Loan Note Guarantee to the lender who is in receipt of a Form RD 449-14 with an obligation in a previous fiscal year if the originally approved borrower (including changes in legal entity) or owners are changed. The only exception to this provision prohibiting a change in the legal entity's form of ownership is when the originally approved borrower or owner is replaced with substantially the same individuals with substantially the same interests, as originally approved and identified in Form FmHA 1980-10. All requests for exceptions must be approved by the FmHA National Office.

(c) Changes in terms and conditions in Form RD 449-14. Once Form FmHA 449-14 is issued and accepted by the lender and borrower, the Commitment shall not be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds, or terms and conditions. Only minor changes will be considered, unless otherwise provided for in this subpart.

(d) Prequarantee review. Coincident with, or immediately after loan closing, the lender will contact FmHA and provide those documents and certifications required in §§1980.60 and 1980.61 of Subpart A of this part. For any loans involving bonds, the opinion of the recognized bond counsel will be reviewed to determine the adequacy of the bonds issued or to be issued. Only when the District Director is satisfied that all conditions for the guarantee have been met, will the Loan Note Guarantee be executed.

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(e) Title for land, rights-of-way, or easements. Where applicable, the lender must certify that the borrower has obtained:

(1) A legal opinion relative to the title to rights-of-way and easements. Lenders are responsible for ensuring that borrowers have obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of a facility. Ordinarily, an opinion of counsel relative to rights-of-way similar to Form FHA 442-22, "Opinion of Counsel Relative to Right-of-Way," is sufficient documentation for rights-of-way.

(2) A title report by the borrower's attorney showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the lender to obtain and record such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and to provide the required security. For example, when a site is for major structures for utility-type facilities, such as a reservoir or pumping station, and the lender is able to obtain only a right-of-way or easement on such a site rather than a fee simple title, such a title report should be requested.

(f) Loan closing. When loan closing plans are established, the lender will notify FmHA.

(g) Review by Office of the General Counsel (OGC). After the Conditional Commitment for Guarantee has been issued and proposed closing documents prepared by the lender and forwarded to FmHA with the Lender's legal counsel's opinion, but prior to issuing the Loan Note Guarantee, the State Director will forward the loan docket to the Regional Attorney for review. After an administrative review, the State Director will include with the docket a letter with recommendations indicating any special items, documents, or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. Copies of the following documents should be submitted for OGC review:

- (1) Letter from FmHA National Office authorizing loan guarantee containing conditions (if applicable);
- (2) Form RD 449-14, including any amendments;
- (3) Loan agreement;
- (4) Promissory notes and/or bond transcripts;

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(5) Security documents - real estate mortgage, security agreement, financing statements, and leases (if applicable);

(6) Proposed Forms FmHA 449-34, 449-35, "Lender's Agreement," and 449-36, "Assignment Guarantee Agreement," if any;

(7) Proposed lender's certification (§1980.60 of Subpart A of this part); and

(8) Opinion of lender's counsel in form prescribed by OGC.

(h) OGC advice. The Regional Attorney will review the docket for legal sufficiency and furnish advice to FmHA. Such advice is for the benefit of FmHA only and does not relieve the lender of its responsibilities under FmHA regulations. Upon receipt of the Regional Attorney's advice, the State Director will correct or cause to be corrected any noted deficiencies before issuing the Loan Note Guarantee.

§1980.857 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee, and Assignment Guarantee Agreement.

Compliance with §1980.61 of Subpart A of this part is required for this subpart.

§§1980.858 - 1980.868 [Reserved]

§1980.869 Design and construction.

Specifications for design and construction provided at §1942.18(d), (j)(1) and (2), and (n)(1), (2), (4), (5), (6), and (11) of Subpart A of Part 1942 of this chapter also apply to this subpart. The lender will provide FmHA with a written certification at the end of construction that all funds were utilized for authorized purposes. The lender will also certify FmHA design policies have been met. The lender will monitor the progress of construction and undertake reviews and project inspections necessary to reasonably assure funds are used for eligible project costs and that problems in project development are expeditiously reported to the District Director.

§1980.870 Loan servicing.

The lender will be responsible for servicing the entire loan in accordance with the lender's loan agreement. The lender will notify FmHA of any violations of the lender's loan agreement.

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(a) The lender will require, at a minimum, annual audited financial statements which will be reviewed by the lender and a copy forwarded to the FmHA District Office with a summary evaluation by the lender. After receipt of the evaluation, the District Director will determine if a joint FmHA lender and borrower site visit will be necessary. Site visits will be conducted at least once every three years but may be scheduled more frequently if conditions warrant. Delinquent borrowers will be visited at least annually. The State Director may waive the audit requirement for financial statements for borrowers with gross annual income of less than \$100,000.

(b) The District Director or his/her designated representative will meet annually with each lender or his/her agent with whom a CP loan guarantee is outstanding. At this meeting, a review will be made of the lender's performance in loan servicing and a determination of any future actions needed. This meeting will be documented in the running record for each borrower serviced by the lender and followed by a letter to the lender. The letter shall be placed in each borrower's case file.

§1980.871. Loan classification.

All CP guaranteed loans will be classified by FmHA at loan closing and again whenever there is a change in the loan which would impact on the original classification. The loans will be classified as set out at §1904.104 of Subpart C of Part 1904 of this chapter.

§1980.872 Defaults by borrower.

(a) In case of any monetary or significant non-monetary default under the loan agreement, the lender is responsible for arranging a meeting with the District Director or designated representative and borrower to resolve the problem. A memorandum of the meeting listing the individuals in attendance and summarizing the problem and proposed solution will be prepared by the FmHA representative and retained in the loan file. When the District Director receives a notice of default on a loan, he/she will immediately notify the State Office in writing of the details. The District Director will notify the lender and borrower of any decision reached by FmHA.

(b) In considering servicing options, some of which are identified in paragraph X. A of Form RD 449-35, the prospects for providing a permanent cure without adversely affecting the risks to FmHA and the lender must become the paramount objective. Within the State Director's authority, temporary curative actions such as payment deferments or collateral subordination, must strengthen the loan and be in the best interest of the lender and FmHA. Some of these actions may require concurrence of the holder(s).

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(c) If the loan was closed with the multi-note option, the lender may need to possess all notes to take some servicing actions. In these situations when FmHA is holder of some of the notes, the State Director may endorse the notes back to the lender after the State Director has sought the advice and guidance of the OGC, provided a proper receipt is received from the lender which defines the reason for the transfer. Under no circumstances will FmHA endorse the original Form RD 449-34 to the lender.

(d) When the State Office determines it is necessary on individual cases, due to some special servicing requirements, it may, at its option, assume the servicing responsibility.

(e) The State Director will report all delinquent and problem loans quarterly to the appropriate National Office program division by the 20th day of January, April, July, and October.

(f) The District Director will notify the Finance Office on Form FmHA 1980-47 of any change in payment terms such as reamortizations or interest rate adjustments and effective dates of any changes resulting from servicing actions.

§1980.873 Liquidation.

Liquidation will be conducted in accordance with the lender's loan agreement and §1980.64 of Subpart A of this part.

(a) State Directors are authorized to approve lender liquidation plans as authorized on separate written approval authorities issued in accordance with Subpart A of Part 1901 of this chapter. Within delegated authorities, the State Director may approve a written partial liquidation plan submitted by the lender covering collateral that must be immediately protected or cared for in order to preserve or maintain its value. Approval of the partial liquidation plan must be in the best interest of the government. The approved partial liquidation plan is only good for those actions necessary to immediately preserve and protect the collateral and must be followed by a complete liquidation plan prepared by the lender in accordance with the requirements of the lender's agreement.

(b) Collateral acquired by the lender can only be released after a complete review of the proposal.

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- (1) There may be instances when the lender acquires the collateral of a borrower where the cost of liquidation exceeds the potential recovery value of the security. Whenever this occurs, the lender with the concurrence of FmHA, can abandon the collateral in lieu of liquidation.
- (2) Sale of acquired collateral to the former borrower, former borrower's stockholder(s) or officer(s), or the lender or lender's stockholder(s) or officer(s), will require the concurrence of FmHA.
- (c) FmHA will exercise the option to liquidate only when there is reason to believe the lender is not likely to initiate liquidation efforts that will result in maximum recovery. When there is reason to believe the lender will not initiate efforts that will maximize recovery through liquidation, the State Director will forward the lender's liquidation plan, if available, with appropriate recommendations along with the State Director's exceptions to the lender's plan to the Director of the appropriate program division in the National Office for evaluation and approval or rejection of the State Director's recommendation. The State Director has no authority to exercise the option to liquidate without National Office approval. When FmHA liquidates, reasonable liquidation expenses will be assessed against the proceeds derived from the sale of the collateral. In such instances the State Director will send to the Finance Office Form RD 1980-45, "Notice of Liquidation Responsibility," to notify the Finance Office that FmHA has liquidation responsibility and Form RD 1980-46, "Report of Liquidation Expense," to request payment of liquidation costs.
- (d) State Directors are responsible for review and acceptance of accounting reports as submitted by lenders and for submission of such reports to lenders when FmHA is conducting liquidation.
- (e) State Directors are authorized to approve final reports of loss from the lender in separate written approval authorities issued in accordance with Subpart A of Part 1901 of this chapter. The State Director will submit to the Finance Office for payment any loss claims of the lender on Form RD 449-30, "Loan Note Guarantee Report of Loss." The Finance Office forwards loss payment checks to the State Director for delivery to the lender. When a loss claim is involved on a particular loan guarantee, ordinarily one estimated "Report of Loss" will be authorized. In the case of bankruptcy, more than one estimated "Report of Loss" may be authorized. Only one final "Report of Loss" will be authorized. A final Form RD 449-30 must be filed with the Finance Office at the completion of all liquidations. The Finance Office will use this form to close out the account.

(f) Final loss payments will be made within the 60 days required, but only after a review by FmHA to assure that all collateral for the loan has been properly accounted for and liquidation expenses are reasonable and within approved limits. State Directors are responsible to see that such reviews are accomplished by the State within 30 days, and final loss claims in excess of the State Director's approval authority are forwarded to be accepted or otherwise resolved by the appropriate National Office program division within the 60-day period. Any estimated loss payments made to the lender must be taken into consideration when paying a final loss on the FmHA guaranteed loan. The estimated loss payment must be treated as a deduction from the principal amount of the loan that is equal to the estimated loss payment. The State Director may request National Office assistance in the conduct of any review. All reviews for final loss claim in excess of the State Director's approval authority (See Subpart A of Part 1901 of this chapter) will be submitted to the appropriate National Office program division for concurrence prior to the State Director's approval of the claim. Close scrutiny of liquidation proceeds and their application in accordance with lien priorities is required. Before final loss payments are approved and to assist in the required review, the State Director will prepare a narrative history of the guarantee transaction which will serve as the summary of occurrences which led to failure of the borrower and actions taken to maximize loan recovery. The original of this report will be filed in the loan case file.

§1980.874 Protective advances.

Protective advances may be made in accordance with the lender's loan agreement and §1980.65 of Subpart A of this part.

(a) The State Director must approve in writing, all protective advances on loans within his/her loan approval authority which exceed a total cumulative advance of \$500 to the same borrower. Protective advances must be reasonable when associated with the value of collateral being preserved.

(b) When considering protective advances, sound judgement must be exercised in determining that the additional funds advanced will actually preserve collateral interests and recovery is actually enhanced by making the advance.

§1980.875 Additional loans or advances.

The State Director may approve within his/her loan approval authority additional nonguaranteed loans or advances prior to or subsequent to the issuance of the Loan Note Guarantee (Form RD 449-34). The State Director shall determine that there will be no adverse changes in the borrower's financial situation and that such loan or advance is not likely to adversely affect the collateral or the guaranteed loan.

§1980.876 Bankruptcy.

(a) It is the lender's responsibility to protect the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include but are not limited to the following:

(1) Lender will file a proof of claim where necessary and all the necessary papers and pleadings concerning the case.

(2) Lender will attend and where necessary participate in meetings of the creditors and all court proceedings.

(3) Lender, whose collateral is subject to being used by the trustee in bankruptcy, will immediately seek adequate protection of the collateral.

(4) Where appropriate, the lender should seek involuntary conversion of a pending Chapter 11 case to a liquidation proceeding under Chapter 7 or under Section 1123(b)(4), or seek dismissal of the proceedings.

(5) FmHA will be kept adequately and regularly informed in writing of all aspects of the proceedings.

(b) In a Chapter 9 or Chapter 11 reorganization, if an independent appraisal is necessary in FmHA's opinion, FmHA and the lender will share such appraisal fee equally.

(c) Expenses on Chapter 11 reorganizations, Chapter 11 or Chapter 7 liquidations (unless the lender is directly the liquidator) are not to be deducted from the collateral proceeds.

(d) All bankruptcy cases should be reported immediately to the National Office by utilizing and completing a problem/delinquent status report. The Regional Attorney must be informed promptly of the proceedings.

(e) FmHA or the lender, with the approval of the State Director, may initiate the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accruals during certain bankruptcy proceedings. The State Director may approve the repurchase of the unpaid guaranteed portion of the loan from the holder(s) to reduce interest accrual during Chapter 7 proceedings or after a Chapter 11 proceeding becomes a liquidation proceeding. If the lender is the holder, an estimated loss payment may be filed at the initiation of a Chapter 7 proceeding or after a Chapter 11 proceeding becomes a liquidation proceeding. On loans in bankruptcy, any loss payment must be handled in accordance with the lender's agreement (Form RD 449-35) and carry the approval of the State Director.

(f) The State Director must approve in advance and in writing the lender's estimated liquidation expenses on loans in liquidation bankruptcy. These expenses must be reasonable and customary and not include in-house expenses of the lender.

§1980.877 Transfers and assumptions.

(a) General. It is the policy of FmHA to approve transfers and assumptions of loans to transferees who will continue the original purpose of the guaranteed loan. All transfers and assumptions will be approved in writing by FmHA. Transfers and assumptions may be approved subject to the following:

(1) When the transaction is to a member of the borrower's organization at a price which will not result in a loss to the lender.

(2) Transfers to eligible borrowers will receive preference over transfers to ineligible borrowers, if recovery to the lender from the sale price is not less than it would be if the transfer was to an ineligible borrower.

(3) The present borrower is unable or unwilling to accomplish the objectives of the guaranteed loan and the transfer will be to the lender's advantage.

(4) If the debt(s) is not equal to the present market value, the transferee will assume an amount at least equal to either the present market value or the debt, whichever is less. The percentage of FmHA's guarantee will be based on the new debt or the current market value, whichever is less.

(5) The lender concurs in the plans for disposition of funds in the transferor's debt service, reserve, and operation and maintenance account.

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(b) Eligible borrowers.

- (1) The total indebtedness may be transferred to an eligible borrower on the same terms.
- (2) The total indebtedness may be transferred to another borrower on different terms not to exceed those terms for which an initial guaranteed loan can be made.
- (3) Less than the total indebtedness may be transferred to another borrower on the same or different terms.
- (4) A guaranteed loan for which the transferee is eligible may be made in connection with a transfer subject to the policies and procedures governing the kind of loan being made.
- (5) If the transferor is to receive a payment for its equity, the total FmHA debt must be assumed.

(c) Ineligible borrower. Transfers to ineligible borrowers are considered only when needed as a method for servicing problem cases when an eligible transferee is not available. Transfers should not be considered as a means by which members can obtain an equity or as a method of providing a source of easy credit for purchasers. Transfers are as follows:

- (1) All transfers to ineligible borrowers will include a one-time nonrefundable transfer fee. Transfer fees will be collected and payments applied in accordance with paragraph (d) of this section.
- (2) For all loans covered by this subpart, the State Director is authorized to approve a transfer of indebtedness to, and assumption of, a loan by a transferee who does not meet the eligibility requirements for the kind of loan being assumed when the ineligible borrower will:
 - (i) Make a significant downpayment.
 - (ii) Agree to pay the remaining balance within not more than 15 years. Installments will be at least equal to the amount amortized over a period not greater than the remaining life of the debt being transferred and the balance will be due the fifteenth year.

(3) Interest rates to ineligible transferees will be the rate specified in the note of the transferor or the rates customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA review and approval. The rates may be either fixed or variable.

(i) Transferees must have the ability to repay the debt according to the assumption agreement and must have the legal authority to enter into the contract. The borrower will submit a current balance sheet. The lender will obtain and analyze the credit history of the borrower. In all transfers, consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(ii) This subpart does not preclude the transferor from receiving equity payments when the full amount of the debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the debt will be paid.

(d) Transfer fees. Transfer fees are a one-time nonrefundable cost to be collected by the lender at the time of application or proposal.

(1) Amount. The transfer fees will be a standard fee plus the cost of the appraisal. This fee will be established by the FmHA National Office and issued annually to all FmHA State Offices for further distribution.

(2) Remittance. The lender will collect and submit the fee to the FmHA District Office. The FmHA District Office will submit the fee to the Finance Office identified as a transfer fee using Form RD 451-2, "Schedule of Remittance."

(3) Waiver. When the State Director determines waiving the transfer fee is in the best interest of the Government, the file will be submitted to the National Office with appropriate recommendations for the request.

(e) Processing transfers and assumptions.

(1) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA written concurrence, only when the value of the collateral being transferred is at least equal to the amount of the loan or part of the loan being assumed. If the transfer is for less than the entire debt:

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(i) FmHA must determine that the transferor and any guarantors have no reasonable debt-paying ability considering their assets and income at the time of transfer.

(ii) The District Director must certify that the transferor has cooperated in good faith, used due diligence to maintain the collateral against loss, and has otherwise fulfilled all of the regulations of this subpart to the best of the borrower's ability.

(2) The lender will make, in all cases, a complete credit analysis to determine viability of the project, subject to FmHA review and approval, including any requirement for deposits in an escrow account as security to meet its determined equity requirements for the project.

(3) The lender will issue a statement to FmHA that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded as appropriate and legally permissible.

(4) The State Director may approve all transfer and assumption provisions if the guaranteed loan debt balance is within his/her loan approval authority including:

(i) Consent in writing to the release of the transferor and guarantors from liability.

(ii) Any changes in loan terms.

NOTE: The assumption will be reviewed as if it were a new loan. The Loan Note Guarantee(s) (Form RD 449-34) will be endorsed in the space provided on the form(s).

(5) The assumption will be made on the lender's form of assumption agreement and will contain the FmHA case number of the transferor and transferee.

(6) If the guaranteed loan debt balance is in excess of the State Director's loan approval authority, the State Director will forward the file, together with his/her recommendations, to the appropriate National Office program division for approval.

(7) A copy of the assumption agreement will be retained in the FmHA file. The District Director will notify the Finance Office of all approved transfer and assumption cases on Form RD 1980-7, "Notification of Transfer and Assumption of a Guaranteed Loan," and submit Form RD 1980-50 for all new borrowers and Form RD 1980-51, "Add, Change, or Delete Guaranteed Loan Record," in order that Finance Office records may be adjusted accordingly.

(8) Loan terms cannot be changed by the assumption agreement unless previously approved in writing by FmHA, with the concurrence of any holder(s) and the transferor (including guarantors) if they have not been released from personal liability. Any new loan terms cannot exceed those authorized in this subpart. The lender's request will be supported by:

(i) An explanation of the reasons for the proposed change in the loan terms.

(ii) Certification that the lien position securing the guaranteed loan will be maintained or improved, proper hazard insurance will be continued in effect, and all applicable Truth in Lending requirements will be met.

(9) In the case of a transfer and assumption, it is the lender's responsibility to see that all such transfers and assumptions will be noted on all originals of the Loan Note Guarantee(s). The lender will provide FmHA a copy of the transfer and assumption agreement. Notice must be given by the lender to FmHA before any borrower or guarantor is released from liability.

(10) The holder(s), if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

(11) If a loss should occur upon consummation of a complete transfer of assets and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability, as provided in paragraph (e) of this section, the lender, if it holds the guaranteed portion, may file an estimated "Report of Loss" on Form RD 449-30 to recover its pro rata share of the actual loss at that time. In completing Form RD 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form RD 449-30, lines 13 and 14.

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(f) Submission to National Office.

(1) Under any of the following conditions, a proposed transfer or assumption will be forwarded to the National Office for prior review and approval before making any commitments:

(i) Where a loss to the Government will result; or

(ii) The prospective transferee is a member of the present borrower's organization; or

(iii) Proposals for transfer or assumption are made on more liberal terms than set forth in paragraph (b) and (c) of this section; or

(iv) Proposals for cash downpayment to the present borrower in an amount which exceeds the actual sales expenses; or

(v) The transfer fee is to be waived for a prospective transferee.

(2) All submissions to the National Office will contain:

(i) Transfer case file.

(ii) OGC comments on the proposed transfer or assumption.

(iii) Appropriate forms to complete the transfer prepared by the transferee.

(iv) Completed environmental review.

(v) Any other necessary supporting information.

§1980.878 Mergers.

(a) General. State Directors are authorized to approve mergers or consolidations (which are herein referred to as mergers) when the resulting organization will be eligible for an FmHA guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower. Mergers may be approved when:

(1) The merger is in the best interest of the Government and the merging borrower.

(2) The resulting borrower can meet all required conditions as set forth in specific loan note agreements.

(3) All property can be legally transferred to the resulting borrower.

(4) The membership of each organization involved is made aware of the proposed merger.

(b) Distinguishing mergers from transfers and assumptions. Mergers occur when one corporation combines with another corporation in such a way that the first corporation ceases to exist as a separate entity while the other continues. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with the original corporations ceasing to exist. Such transactions must be distinguished from transfers and assumptions in which a transferor will not necessarily go out of existence, and the transferee will not always take all the transferor's assets, nor assume all the transferor's liabilities.

§1980.879 Disposition of acquired property.

(a) When the lender acquires title to the collateral through a voluntary basis or foreclosure means, and the FmHA final loss claim is not paid until final disposition, the lender should proceed as quickly as possible to develop a plan to see that the collateral is fully protected and a program to dispose of the collateral is commenced.

(b) Any collateral accepted by the lender on a voluntary basis or through foreclosure means must be titled in only the lender's name. FmHA should never be named as owner or co-owner of the collateral. FmHA's position is that of a guarantor.

(c) The first step the lender should take after acquiring the collateral is to see that the collateral is protected from deterioration (weather, vandalism). Hazard insurance in an amount necessary to cover the fair market value of the collateral should be maintained by the lender.

(d) The lender will prepare and submit to the District Director a plan on the best method of sale keeping in mind any prospective purchasers. The District Director will review and recommend action on the plan and forward the plan to the State Director for concurrence. Concurrence or non-concurrence of the plan shall be made in writing to the lender. If an existing liquidation plan addressed the disposition of acquired property, no further review is required unless modification of the plan is needed.

§1980.879 (Con.)

(e) Methods of liquidation.

(1) Direct sale by lender.

(2) Use of commercial broker.

(i) Broker should be experienced in the type of property involved.

(ii) The written agreement with the broker should include an agreement which allows that if the lender finds a purchaser, no commission would be paid to the broker.

(iii) A maximum of 120 days should be allowed on the contract. The contract should be renewable if all parties agree.

(3) Public auction.

(i) An experienced professional auctioneer should be engaged.

(ii) Adequate advertising should be obtained.

(iii) The lender with FmHA concurrence shall determine a minimum sale price for the collateral.

(f) Abandonment of the collateral.

(1) The primary purpose of collateral is to afford a net return on the loan balance. However, there will be times when FmHA will be faced with situations when converting the collateral to cash would result in a loss.

(2) Situations when this type of action could exist are:

(i) Senior lien claims held by other parties against the guaranteed loan collateral and the senior lien claims are more than the collateral value.

(ii) Collateral on the loan has deteriorated to the point where the net sale value (after expenses) of the collateral would not produce any funds that could be applied to the outstanding debt.

(iii) Specialized collateral which has little or no value or demand, taking into consideration the expenses of the sale.

(3) Anytime there is a case when the conversion of collateral to cash can reasonably be expected to result in a negative net recovery amount, abandonment of the collateral should be strongly considered. When a decision to abandon the property is recommended, the District Director will document the recommendation in the file and forward the file to the State Director. The State Director is authorized to approve such decision with prior concurrence of the National Office.

§1980.880 State Director's additional authorizations and guidance.

All proposed servicing actions which the State Director or lender is not authorized by this subpart to approve will be referred to the National Office.

§1980.881 Appeals.

Appeals are handled in accordance with §1980.80 of Subpart A of this part and Subpart B of Part 1900 of this chapter.

§§1980.882 - 1980.899 [Reserved]

§1980.900 OMB Control Number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0137. Public reporting burden for this collection of information is estimated to vary from 1 to 50 hours with an average of 20 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575-0137), Washington, D.C. 20503.

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